

# B Commercial Bank

Serving Southeast Kansas Since 1874!

July 31, 2008

Jennifer J. Johnson  
Secretary, Board of Governors  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave, N.W.  
Washington DC, 20551

Re: FRB Docket No. R-1314; OTS Docket  
No. OTS-2008-0004; Unfair or  
Deceptive Acts or Practices; 73 Federal  
Register 28904; May 19, 2008

This letter is being written in reference to your proposed rule on overdraft fees. Basically there are four aspects of the proposal that we wish to address:

- a. Overdraft fees can be avoided by consumers without requiring a specific advance notice and opt-out followed by repeated periodic opt-out reminders. Consumers regularly manage their accounts to avoid overdrawing them. Our bank offers overdraft options today without the burdensome compliance exercise of a formal one-size-fits-all opt-out requirement. If a consumer writes an insufficient check, makes a debit card purchase, or ATM transaction, they are charged the same fee to pay the transaction as they would be charged if the item was paid overdrawing their account. In our opinion, the banks should have a standardized charge to pay an item overdrawing an account as they charge to return the item unpaid.
- b. The proposal for a partial opt-out of ATM and debit card transactions, while retaining coverage for checks and ACH, is not technically feasible under our processing system, and could not be implemented without numerous exceptions due to processing system complexity. However, we do allow for our customers to not complete their transactions at our ATM's if the transactions go over their available balance and they would be charged an overdraft fee. Many customers now use their debit cards for recurring payments, which would affect them adversely if these transactions were rejected.
- c. The proposal covering debit holds is far too complicated to be implemented or for consumers to understand. Many merchants in the hospitality industry alert customers that holds may be

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- d. out on accounts if they use a debit card at check in. If we are aware that a hold has been put on an account from this industry, we honor the checks or other debit card/ATM transactions and do not charge the customer. Gasoline purchases quite often overdraw an account when they settle, but the authorization hold is just for a nominal amount, and then the transaction settles for more than is in the account. We have no option but to pay debit transactions, and we charge our normal overdraft/NSF fee for this. This is the scenario whether or not the account has overdraft privileges. We have been made aware that Card system rules are evolving to address authorizations for gasoline purchases at the pump to make them virtually real time. Restaurants basically do the same thing with the addition of tips at the cashiers station. Again the authorization is for less than the settling transaction.
- e. The payment clearance processing and the order of recognizing payments depends on the varied risks that we face through the different payment channels. For example, we cannot return a debit card purchase, or an ATM transaction—these are required to be paid. Therefore, these are top priority in the payment channel. We do not manipulate the order debits are paid to generate more overdraft fees. Any regulatory requirement on the processing order of items would not be practical and would create a tremendous burden on the financial institutions. Also, letting an individual customer choose an alternative payment processing order would be absolutely impossible to manage.

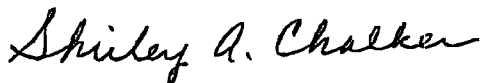
Commercial Bank has followed the Interagency guidance and best practices on overdraft programs for 2005 and have never been criticized by an examiner for how we've run our program. By our complying with this guidance, our programs should not be rendered unfair now. Even though we no longer "promote" or advertise the Overdraft Privilege service to consumers, we are now disclosing on our periodic bank statements the total of non-sufficient funds and overdraft fees for the account. We report the year to date and statement period charges for paid debits (checks, debit card transactions, ACH items etc.) that overdraw their account, and also non-sufficient fund charges where items are returned.

Fees for covering overdrafts are in the account agreement, and new customers are made aware of these fees as well as any maintenance fees and NSF fees at account opening. In other words, they know in advance what the rules and the costs are for overdrawing an account—all without a formal opt-out notice. The customer is also encouraged to utilize our Internet Banking or voice response system to find out their available balance, and thus refrain from overdrawing their account.

Finally, if a customer elects to opt-out of the institution's payment of overdrafts, it needs to be clearly stated that their payment may be denied, or returned unpaid, and that the consumer may incur

returned items fees from both the institution as well as the payee. ABA completed a survey in 2008 and found that 85 percent of those who had an overdraft fee in the past year where glad the payment were covered.

Sincerely,



Shirley A. Chalker  
Vice President  
Commercial Bank  
Parsons, KS 67357

Cc: OTS

Senator Pat Roberts  
Senator Sam Brownback  
Representative Nancy Boyda